

DISCIPLINARY APPEAL HEARING
BEFORE THE SAN LUIS OBISPO CITY COUNCIL

In the matter of the Appeal of)
DANIEL McDOW) CITY COUNCIL FINDINGS OF FACT;
) DECISION AND FINAL ORDER
Appellant,)
v.)
SAN LUIS OBISPO POLICE)
DEPARTMENT; CITY OF SAN LUIS)
OBISPO)
Department/Employer.)

This Appeal arises out of the disciplinary action imposed on Police Officer Dan McDow for an incident that occurred on September 15, 2009 at the US-Mexico Border. Based upon the incident and actions associated with the incident, Dan McDow was terminated from his employment with the San Luis Obispo Police Department for violation of City and Police Department Rules and Regulations. The primary reason for the termination of Police Officer Dan McDow was the fact that he was found guilty of a Federal Misdemeanor for the possession of prescription drugs without a prescription.

Police Officer Dan McDow timely appealed his termination pursuant to San Luis Obispo Personnel Rules and Regulations Section 2.36.350. The parties selected James G. Merrill as the Hearing Officer to make Findings and Recommendations to the City Council.

1 The Appeal Hearings were held on June 11, 12 and October 8 and 9, 2012. Appellant was
2 represented by Andrew M. Dawson, Esq. The Department/City was represented by David
3 Fleishman, Esq.

4 Both parties, through their respective representatives, were provided an opportunity to
5 present evidence through exhibits and the sworn testimony of witnesses who were subject to
6 cross-examination. A stenographic record of the hearing was made by a Certified Court Reporter.

7 Department/City called four (4) witnesses which included: (1) Sonia Tapia, ICE Special
8 Agent; 2) Police Chief Deb Linden, City of San Luis Obispo; (3) Captain Christopher Staley,
9 City of San Luis Obispo; (4) Lieutenant Thomas De Priest, City of San Luis Obispo.

10 Appellant Dan McDow called 2 witnesses which included: (1) Police Chief Deb Linden,
11 City of San Luis Obispo and (2) Appellant Dan McDow.

12 The Department/City entered into evidence Exhibits C 1-15. Dan McDow entered into
13 evidence Exhibits A- 1, 4, 5, 6, and 9.

14 On December 4, 2012, the Hearing Officer issued his Findings and Recommendations.
15 The Hearing Officer recommended that charges 1, 3, 5, 6, and 7 listed below be sustained. The
16 Hearing Officer determined that charges 2 and 4 listed below were not supported by the
17 preponderance of evidence and were unfounded.

- 18 1. Violation of San Luis Obispo Police Department Rules and regulations
19 Section IV. LL. – Conduct detrimental to the Department.
- 20 2. Violation of San Luis Obispo Police Department Rules and regulations Section
21 IV. KK. 5. Neglect of duty – failure to report information regarding criminal
22 activity or criminal violation involving a department employee.
- 23 3. Violation of San Luis Obispo Police Department rules and Regulations section
24 IV.Y. – Absence from Duty.

- 1 4. Violation of San Luis Obispo Police Department Rules and regulations
2 Section VIIC. 1. Causes for Disciplinary Action – conviction of a felony or
3 misdemeanor under the law of the State of California.
- 4 5. Violation of San Luis Obispo Police Department Rules and regulations
5 Section VII C. 6. – Causes for disciplinary action – Unauthorized or
6 inexcusable absence without leave or unauthorized use of sick leave.
- 7 6. Violation of San Luis Obispo Police Department rules and regulations section
8 VII C. 10. Causes for disciplinary action – violation of any of the provisions
9 of the Personnel rules and regulations Manual or of any department policy,
10 directive, or rule or regulation.
- 11 7. Violation of San Luis Obispo Municipal code 2.36.380 A- Code of Ethics –
12 An official or employee of the City shall not engage in conduct which would
13 tend to discredit or dishonor his/her position with the city.

14
15 The Hearing Officer recommended that Appellant be returned to duty as a police officer
16 on a Last Chance Agreement which includes a provision that any future violation of the Policies
17 of the Police Department would result in immediate termination. The Hearing Officer
18 recommended that the Last Chance Agreement be in effect for a 2 year period.

19 The Hearing Officer's findings and recommendations were then forwarded to the City
20 Council pursuant to San Luis Obispo Personnel Rules and Regulations Section 236.350 F. The
21 City Council now has jurisdiction over this matter pursuant San Luis Obispo Rules and
22 Regulations Section 236.350 G. The City Council may affirm, reverse, or modify the
23 Department/City decision.

24 The City Council met in Closed Session on April 8 and April 24, 2013 to review the
25 Hearing Officer's findings and recommendations and the record of the hearing. The Attorney for

1 Dan McDow was notified prior to the Closed Session of the opportunity to speak to the City
2 Council during the public comment period. No one appeared or spoke during public comment
3 period.
4

5 **FINDINGS OF FACT**

6 The City Council has considered the exhibits, the reporter's transcript, the post briefs and
7 the Hearing Officer's findings and recommendations, and makes the following findings of fact,
8 which were established by a preponderance of the evidence.

9 1. Police Officer Dan McDow (hereinafter McDow) started his employment with the
10 San Luis Obispo Police Department in 2002 as a dispatcher. (Reporter's transcript of
11 Proceedings, Page 556, lines 6-7 (hereinafter 556:6-7)).

12 2. McDow started as a dispatcher for the City of San Luis Obispo in 2002. He was a
13 dispatcher for about a year and a half before going to the police academy to become a police
14 officer. (556:7-10)

15 3. On September 15, 2009 McDow took a less than 24 hour trip to Mexico with
16 fellow police officer Armando Limon. (Employer Exhibit, C 11 hereinafter C-11, page 16)

17 4. Both Limon and McDow testified during the Administrative Investigation that
18 shortly after arriving in Mexico, they visited a pharmacy to get diet pills for Limon's wife. (C-
19 11, pages 12-13 and 16-17)

20 5. McDow testified during the Administrative Investigation that Limon's wife had
21 been given the diet pill "Yeduc" by her parents, and she wanted to get some more. (C-11, pages
22 16-17)

23 6. McDow testified that while at the pharmacy he knew Limon was also buying
24 Ritalin, because he saw him put it down on the counter at the pharmacy and was close enough to
25

1 the counter to be able to see both the size of the boxes, and the word "Ritalin" on the boxes.
2 (649:18-11)

3 7. While waiting for Limon to purchase the diet pills and Ritalin, McDow bought
4 "diet pills" called Tenuate, or Diethylpropion, a Schedule IV controlled substance (C-5, page 4)
5 and a bottle of Soma (carisoprodol).

6 8. McDow acknowledged buying a bottle of Soma was a "stupid" thing. (C-11,
7 page 17)

8 9. During the Administrative Investigation, Limon testified that he asked the
9 pharmacist if they would get in trouble taking the pills across the border and the pharmacist said
10 there was nothing to worry about unless they had prescription medication. (C-11, page 13)

11 10. McDow testified that the pharmacist who sold him the pharmaceuticals said "it's
12 okay, as long as you're not taking prescription medications across." (624:18-22)

13 11. McDow testified that the bottle that he had in his pocket when he crossed the
14 border had Methylphenidate Hydrochloride on it. (641:8-642:6)

15 12. Methylphenidate Hydrochloride is the generic form of Ritalin. (642:7-25)

16 13. McDow testified he should have known that the tablet was Ritalin. (581:8)

17 14. There were 34 tablets of Methylphenidate Hydrochloride in the bottle in
18 McDow's pocket when he was detained at the border. (643:1-5)

19 15. There were 165 tablets of Tenuate, or Diethylpropion, in McDow's
20 possession when he crossed the border. (C-5, page 3)

21 16. Methylphenidate hydrochloride is a Schedule II controlled substance.
22 Tenuate is a Schedule IV controlled substance. (C-5, page 3).

23 17. McDow testified that he possessed Soma, another prescription medication,
24 when he came across the border. (653:23-25)

1 18. McDow testified that he knew that Soma required a prescription at the time he
2 was at the border. (623:21-624:17)

3 19. McDow testified that he became worried the pills he was carrying could have
4 been "ecstasy". (655:13-20)

5 20. When McDow arrived at the US border inspection area, he was greeted by a
6 uniformed border officer at the driver's door of the car McDow was driving, and McDow was
7 asked if he had anything to declare. McDow responded "No." (C-11, page 18)

8 21. Upon further questioning of the two officers, Limon admitted he had Ritalin in the
9 trunk of the car. (C-11, page 18)

10 22. McDow and Limon were then asked to exit the vehicle, and they were escorted to
11 an interview room. McDow was searched, and a plastic bottle was found in his front pocket,
12 which contained numerous unidentified pills. (C-4, page 4)

13 23. McDow was given the opportunity to make a telephone call. He called his
14 girlfriend, Holly Hovore. (C-11, page 19)

15 24. Border Agent Sonia Tapia was in the room when McDow made the telephone
16 call; Tapia testified that she overheard McDow ask Hovore to call in to the police department
17 and tell them he wasn't going to be in to work that day, and that he was going to be sick. (66:13-
18 17)

19 25. The Administrative Investigation determined that the San Luis Obispo Police
20 Department Communications Technician who answered the call from Hovore, confirmed that
21 McDow's girlfriend reported that McDow was sick. (C-11 page 27)

22 26. At no time during the evening did McDow tell Tapia he was feeling sick. (66:18-
23 21)

24 27. Tapia overheard McDow say to his girlfriend he was an "idiot", and the situation
25 he was in was a "massive case of ignorance". (C-11, page 24)

1 28. Tapia further heard McDow say to his girlfriend "I'm going to jail, and it all goes
2 down from here." (64:20-22)

3 29. Tapia noticed text messages on Limon's phone from "My Love". The text
4 messages were: "Have you passed the line yet?" and "Hey Mondo are you guys okay? Dan was
5 going to text me when u were thru the border and he hasn't been responding so I just wanted to
6 be sure...thx". (C -4, page 6)

7 30. The pills seized from the bottle in McDow's pocket were analyzed by a
8 laboratory, and they ultimately were determined to be 165 tablets of Diethylpropion (Tenuate)
9 and 34 tablets of Methylphenidate HCl (Ritalin). (C-5, page 3)

10 31. McDow failed to declare medications that he was bringing from Mexico. (C-2)

11 32. The medication seized from McDow was hidden among personal items in the
12 vehicle, and on McDow. (C-2)

13 33. McDow was uncooperative during the investigation part of the seizure.
14 (C-2)

15 34. McDow refused to answer questions made by the Duty Agent during the
16 interview phase. (C-2)

17 35. McDow and Limon were released by the border officials on the morning
18 of September 16, 2009. (C-11, page 19)

19 36. McDow and Limon rented a vehicle to drive back home, as their vehicle
20 had been impounded by the border officials. (C-11, page 19)

21 37. When McDow and Limon arrived at Limon's house in Santa Maria, they
22 were met by Captain Staley and Lieutenant Tolley. Staley gave McDow a notice placing
23 McDow on administrative leave effective that day, pending completion of an
24 investigation regarding McDow's conduct. (C-3)

1 38. McDow was later charged with a violation of United States Code Title 21, Section
2 331, introduction and delivery for introduction into interstate commerce a misbranded drug.
3 McDow pleaded guilty to the charge and the plea agreement was entered on April 28, 2010. (C-
4 7)

5 39. As part of the plea agreement, McDow admitted that on September 15, 2009,
6 when he crossed the border, he was in possession of Methylphenidate, a Schedule II controlled
7 substance and Diethylpropion, a Schedule IV controlled substance. (C-7, page 2)

8 40. As part of the plea agreement, McDow admitted that on September 15, 2009, all
9 of the pharmaceuticals in McDow's possession were labeled in Spanish and not in English.
10 McDow did not have instructions for using the pharmaceuticals either on his person or in the
11 vehicle. McDow did not have a prescription for any of the pharmaceuticals . (C-7, page 2)

12 41. As part of the plea agreement, McDow admitted that the pharmaceuticals were
13 misbranded for the purpose of 21 U.S.C. Section 331 (a). (C-7, page 2)

14 42. On May 12, 2010, McDow was informed that a personnel investigation was being
15 conducted into the events that resulted in his guilty plea to a federal misdemeanor conviction.
16 (C-8)

17 43. Lieutenant Tom De Priest conducted the internal investigation and he provided
18 McDow notification of his Miranda and Lybarger rights. McDow waived his rights and agreed
19 to talk with De Priest about the incident. (C-9)

20 44. An internal affairs investigation was completed on June 28, 2010. The internal
21 investigation included interviews of key witnesses and of Officer McDow. (C-11)

22 45. The internal affairs investigation report issued by De Priest sustained seven of the
23 nine allegations filed against McDow. (C-11)

24 46. Captains Parkinson and Staley reviewed the facts of the investigation and they
25 both concluded that McDow had violated numerous provisions of the San Luis Obispo Police

1 Department Rules and Regulations, as well as the City's municipal code. They provided their
2 review and recommendations in a written memorandum to Police Chief Deborah Linden. (C-10)

3 47. Based on Police Chief Deborah Linden's review of the Internal Investigation,
4 McDow was served with a Notice of Intent to Administer Disciplinary Action and Right to
5 Respond, dated July 2, 2010. The disciplinary action being proposed in this notice was
6 termination of employment. (C-12)

7 48. On July 30, 2010, McDow participated in a "Skelly" meeting with Police Chief
8 Deborah Linden to allow him an opportunity to try and convince the Police Chief to modify or
9 rescind the proposed disciplinary action. McDow's attorney contested the findings on two of the
10 charged policy violations; one being the improper use of sick leave and the other being the
11 failure to report criminal conduct to the police department. (C-12, page 1)

12 49. After the Skelly meeting, Police Chief Linden did not find any basis to change the
13 proposed discipline, stating that "the seriousness of the other sustained violations constituted
14 cause for termination with or without the two violations questioned by your attorney." (C-13,
15 page 2)

16 50. Police Officers are responsible to uphold the laws of the United States and not
17 violate them. (Hearing Officer's Findings & Recommendations, page 16 (hereinafter HOF&R,
18 page 16))

19 51. Law Enforcement Officers must maintain high levels of integrity in order to
20 maintain credibility with the public. Integrity is considered the measure of an individual, an
21 agency, an institution, a discipline, or an entire nation. Incidents of Police Officers being
22 detained at the Border are of concern because these situations tarnish and create a negative image
23 of Law Enforcement Officers in the eyes of the public and the law enforcement community. (C-
24 2)

1 52. The actions of McDow were the subject of public information which reflected
2 negatively on the image of the San Luis Obispo Police department. (HOF&R, page 16)

3 53. McDow testified that it was not a positive thing for a police officer to have a
4 federal misdemeanor conviction. 605:23-606:4.

5 54. McDow testified that police officers shouldn't get convicted for federal
6 misdemeanors of any kind. (606:7-10)

7 55. McDow testified his conduct "soiled his family tree" and "tarnished" himself by
8 his conduct and said "if I tarnish myself I tarnish them" (referring to the Police Department).
9 (603:5-12)

10 56. The charge that McDow violated San Luis Obispo Police Department Rules and
11 Regulations Section IV.LL - Conduct detrimental to the Department - is supported by the
12 preponderance of evidence. The conviction of a Federal Misdemeanor is sufficient evidence that
13 McDow's actions consisted of conduct which is detrimental to the Department. (HOF&R, page
14 16)

15 57. The charge that McDow violated San Luis Obispo Police Department Rules and
16 Regulations Section IV.KK.5. - Neglect of duty - failure to report information regarding
17 criminal activity or criminal violation involving a department employee - is not supported by the
18 preponderance of evidence. The Department was notified and since McDow was not charged at
19 that time, there was no basis to conclude that he was required to report that he was involved with
20 criminal activity. (HOF&R, page 16)

21 58. The charge that McDow violated San Luis Obispo Police Department Rules and
22 Regulations Section IV.Y - Absence from Duty - is supported by the preponderance of evidence.
23 In reviewing the evidence as a whole, it appears that McDow was untruthful in regard to the
24 charges that he was absent from duty on September 15, 2009. McDow did not receive
25 authorization in advance to be excused from duty on September 16, 2009, nor did he request

1 official leave. The testimony of special Agent Tapia supports that McDow did in fact advise his
2 girlfriend to tell the department he was sick. In addition, the internal investigation disclosed that
3 the Communications Technician confirmed that McDow's girlfriend reported that McDow was
4 sick. McDow's testimony that he did not tell his girlfriend to tell work that he was sick is not
5 credible. (HOF&R, page 16)

6 59. The charge that McDow violated San Luis Obispo Police Department Rules and
7 Regulations Section VII.C.I. - Causes for Disciplinary Action - Conviction of a felony or
8 misdemeanor under the laws of the State of California - is not supported by the preponderance of
9 evidence as this Department Rule requires conviction of felony or misdemeanor under the laws
10 of California. McDow was never convicted under state law. (HOF&R, page 16-17).

11 60. The charge that McDow violated Violation of San Luis Obispo Police department
12 Rules and Regulations Section VII.C.6. - Cause of Disciplinary Action - Unauthorized or
13 inexcusable absence without leave or unauthorized use of sick leave - is supported by the
14 preponderance of evidence. (HOF&R, page 17)

15 61. The charge that McDow violated San Luis Obispo Police Department Rules and
16 Regulations Section VII.C.10 - Causes for disciplinary Action - violation of any of the
17 provisions of the Personnel Rules and Regulations Manual or of any departmental policy,
18 directive, or rules or regulations - is supported by the preponderance of evidence. (HOF&R,
19 page 17)

20 62. The charge that McDow violated San Luis Obispo Municipal Code 2.36.380 A -
21 Code of Ethics - An official or employee of the city shall not engage in conduct which would
22 tend to discredit or dishonor his/her position with the city - is supported by the preponderance of
23 evidence. The conviction of a Federal Misdemeanor is sufficient evidence that McDow's actions
24 consisted of conduct which would tend to discredit or dishonor his/her position with the City.
25 (HOF&R, page 17)

1 **CONCLUSION OF LAW AND DECISION**

2 The effectiveness of the San Luis Obispo Police Department depends on community
3 respect and confidence. The trust earned by the Police Department allows its employees to
4 operate efficiently. It is vitally important that all employees of the San Luis Obispo Police
5 Department conduct themselves in a manner demonstrating unquestionable integrity, reliability,
6 and honesty consistent with public expectations. The success of the San Luis Obispo Police
7 Department rests in the reliability and credibility of its police officers - whether interacting with
8 citizens, making arrests, testifying in any court or legal proceeding, or providing information in
9 any official setting.

10 A police officer's job is a position of trust and the public has a right to the highest
11 standard of behavior from those they invest with the power and authority of a law enforcement
12 officer. Honesty, credibility and temperament are crucial to the proper performance of an
13 officer's duties. Dishonesty is incompatible with the public trust. *Kolender v. San Diego County*
14 *Civil Service Com.*, 149 Cal. App. 4th 464, 471 (Cal. App. 4th Dist. 2007).

15 The rationale that public trust is inherent in the role of a law enforcement officer, the
16 breach of which is grounds for employee discipline was applied in *Hankla v. Long Beach Civil*
17 *Service Commission* (1995) 34 Cal.App.4th 1216, in which the Court of Appeal opined that law
18 enforcement officers "are guardians of the peace and security of the community, and the
19 efficiency of our whole system, designed for the purpose of maintaining law and order, depends
20 upon the extent to which such officers perform their duties and are faithful to the trust reposed in
21 them."

22 In considering whether an abuse of discretion occurred in the context of public employee
23 discipline, the City Council notes that the overriding consideration in these cases is the extent to
24 which the employee's conduct resulted in, or if repeated is likely to result in harm to the public
25 service. Other relevant factors include the circumstances surrounding the misconduct and the

1 likelihood of its recurrence. *Skelly v. State Personnel Bd., supra, 15 Cal.3d at p. 218*. The public
2 is entitled to protection from unprofessional employees whose conduct places people at risk of
3 injury and the government at risk of incurring liability. *County of Santa Clara v. Willis (1986)*
4 *179 Cal.App.3d 1240, 1252*.

5 In *Talmo v. Civil Serv. Comm'n of Los Angeles County, 231 Cal. App. 3d 210 (2d Dist.*
6 *1991*, similar to McDow's situation, the court rejected a police officer's claims that a lesser
7 discipline should have been imposed and that discharge was out of proportion to the misconduct.
8 Just as with McDow, the court also rejected the deputy's assertion that the department had not
9 fired other deputies alleged to have committed similar misconduct. Noting that even if the deputy
10 had proved this, which the court found he did not, the court held "there is no requirement that
11 charges similar in nature must result in identical penalties." In upholding the deputy's discharge,
12 the court opined that "when an officer of the law violates the very law he was hired to enforce
13he forfeits the trust of his department and the public." Further, the court emphasized that a
14 "deputy sheriff's job is a position of trust and the public has a right to the highest standard of
15 behavior from those invested with the power and authority of a law enforcement officer.
16 Honesty, credibility and temperament are crucial to the proper performance of an officer's
17 duties." By committing a federal crime and subsequently being untruthful about what he knew
18 or should have known, McDow caused harm to the public service.

19 To further emphasize the City Council's point, in *Ackerman v. State Pers. Bd., 145 Cal.*
20 *App. 3d 395 (1st Dist. 1983)* the court ruled, that the officer's discharge was proper because
21 police officers "must be held to higher standard than other employees." "The credibility and
22 honesty of an officer are the essence of the function." Consequently, the court reasoned that
23 "[a]ny breach of trust must therefore be looked upon with deep concern." Just as in *Ackerman*,
24 McDow was convicted of a crime and was not cooperative during the investigation, which
25 caused harm to the public service and justified his discharge.

1 Based upon the above body of law, the City Council finds and determines that San Luis
2 Obispo Police Officers must be held to a higher standard of conduct than most, to ensure the
3 confidence and respect of the citizens they serve. In McDow's case, the City Council finds and
4 determines that McDow knew, or reasonably should have known, based upon his knowledge and
5 experience as a Police Officer, that it is illegal to bring into the US, foreign-made drugs without
6 a valid prescription in your own name from a U.S doctor. Furthermore, McDow knew, or should
7 have known that any such drugs must be declared to U.S. Customs. To find otherwise, given the
8 relevant facts would defy logical reasoning that a Police Officer should not be required to know
9 the law. Daniel McDow, while possessing many fine qualities, has demonstrably failed to meet
10 that higher standard of conduct for a law enforcement officer by his conduct and action.

11 With respect to the question of penalty, the City Council cannot agree with the Hearing
12 Officer's recommendation to allow McDow to return to work under a Last Chance Agreement.
13 An experienced Police Lieutenant, two experienced Police Captains, the Chief of Police, and the
14 Hearing Officer all conducted a thorough review of the facts and applicable departmental
15 policies and each concluded that McDow's charges were "serious misconduct" that violated
16 departmental policy and was detrimental to the Department. The internal investigation was fair
17 and adequate and all recommended termination. It is the City Council's decision that a Last
18 Chance Agreement is simply inappropriate considering the seriousness of McDow being
19 convicted of a Federal crime.

20 Having concluded that McDow in fact committed the offenses alleged against him and
21 that his actions were detrimental to the Department and public service, the superior court will be
22 required to uphold the City's punishment if there was any reasonable basis for sustaining it.
23 *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 54, 76 Cal.Rptr.2d 356; □ *County of Los*
24 *Angeles v. Civil Service Com., supra*, 39 Cal.App.4th at p. 634, 46 Cal.Rptr.2d 256; □ *West*
25 *Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1778-1779,

1 21 Cal.Rptr.2d 5; □ *Talmo v. Civil Service Com.* (1991) 231 Cal.App.3d 210, 226, 282 Cal.Rptr.
2 240; □ *Schmitt v. City of Rialto* (1985) 164 Cal.App.3d 494, 500-501, 210 Cal.Rptr. 788. It is
3 only in the exceptional case, when it is shown that reasonable minds cannot differ on the
4 propriety of the penalty, that an abuse of discretion is shown. *West Valley-Mission Community*
5 *College Dist. v. Concepcion, supra*, 16 Cal.App.4th at p. 1779, 21 Cal.Rptr.2d 5; □ *County of*
6 *Santa Clara v. Willis* (1986) 179 Cal.App.3d 1240, 1250-1251, 225 Cal.Rptr. 244.

7 It is the decision of the City Council that the termination of Dan McDow is justified and,
8 therefore, sustained. None of this is intended to suggest that this has been an easy decision. The
9 City Council is well aware of the impact of termination from employment for a police officer.
10 However, police officers are critically important to the community and their work is entitled to
11 the highest respect from citizens. Part of that foundation of trust, though, must be premised on
12 the assumption that they will not violate the law.


13
14 **FINAL ORDER**

15 The Department/City carefully weighed the evidence and its options in this matter and
16 acted in good faith to terminate Dan McDow. The City Council sustains this determination on
17 not only the facts but as to the discipline as well. The integrity of the discipline system demands
18 this result in light of Dan McDow's conviction of a federal crime and the severity of his
19 wrongful acts. In making this decision, a clear message is being sent that ethical behavior on the
20 part of all police employees is a main priority of the City Council. Ethical behavior on the part of
21 police officers is something that the public and our political system insist on and is required, if
22 we are to maintain our system of justice. Without consistent highly ethical behavior on the part
23 of officers, which exceeds the norm of the community, we will see a rapid undercutting of our
24 traditional social/political values and a descent in the confidence of the public in the abilities and
25 reputations of our Police Department.

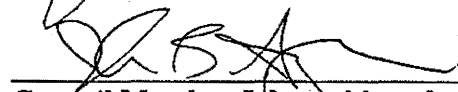
Pursuant to California Code of Civil Procedure Section 1094.6, this Decision is final upon the date it is mailed by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Please also note that pursuant to section 1094.6, subdivision (b): "Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision of the findings, within which a petition shall be filed." For further details regarding procedures to be followed, please refer to the California Code of Civil Procedure including, but not limited to, sections 1094.5 and 1094.6

The foregoing Decision and Final Order is adopted by a vote of 4-0, with one Council Member position vacant. Mayor Jan Marx, and Council Members Ashbaugh, Carpenter and Smith voting in favor thereof.

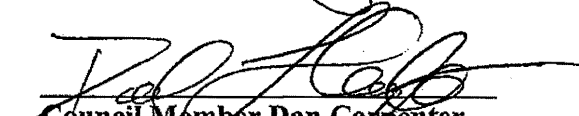
Dated: 4/26/2013


Mayor Jan Howell Marx

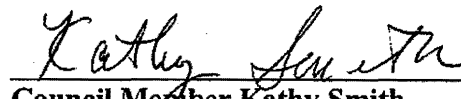
Dated: 4/30/2013


Council Member John Ashbaugh

Dated: 4/26/13



Council Member Dan Carpenter

Dated: 4/30/13


Council Member Kathy Smith

Approved as to Form:

Dated: 5/1/13


Robert Schultz, Esq.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }
 }
COUNTY OF SAN LUIS OBISPO }

I, the undersigned, declare that I am an active member of the State Bar of California and I am over the age of 18 years and am not a party to the within action. My business address is 595 Harbor Street, Morro Bay, CA 93442.

On May 2, 2013, I served in the manner indicated below the foregoing documents, described as:

**CITY COUNCIL FINDINGS OF FACT;
DECISION AND FINAL ORDER: DANIEL McDOW V. SAN LUIS OBISPO POLICE
DEPARTMENT, CITY OF SAN LUIS OBISPO**

on the interested parties in this action by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Andrew Dawson
Lackie, Dammeier & McGill
367 N. Second Avenue
Upland, CA 91786

David Fleishman
Hanley & Fleishman, LLP
8930 Morro Road
Atascadero, CA 93422

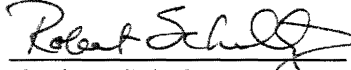
James Merrill
2479 Rivers Bend Circle
Livermore, California 94550

Christine Dietrick
City Attorney's Office
990 Palm Street
San Luis Obispo, CA 93401

I personally caused such envelope(s) to be deposited in the United States Mail at Morro Bay, California, with postage thereon fully prepaid [CCP §1013(a)(2).]

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 2, 2013, at Morro Bay, California.


Robert Schultz